IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ram Lal Vs. State of Raj.
(D.B. Criminal Jail Appeal No.119/2003)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 27-8-2002 in Sessions Case No.65/2001 passed by Shri Kamal Kumar Bagri, RHJS, Additional Sessions Judge (Fast Track) Sikar.

Date of Judgment: July 19, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. S.L.Songara, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellant seeks to set aside the judgment dated August 27, 2002 of the learned Additional Sessions Judge (Fast Track) Sikar, whereby the appellant was convicted and sentenced as under:-

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer two months imprisonment.

U/s.364 IPC:

To suffer rigorous imprisonment for ten years and fine of Rs.500/-, in default to further suffer one month imprisonment.

Sentences were directed to run concurrently.

2. It is the prosecution case that on April 21, 2001 at 12.30 PM

when the SHO Police Station Sadar Sikar reached to the village Deep Pura Rajaj ji, Badri Prasad (Pw.3) handed over a written report (Ex.P-9) and appellant Ram Lal to the SHO. It was inter alia stated in the report that the appellant who had been employed for agricultural work some time back, came to his Dhani on April 20, 2001 and took his son Gheesa Ram, aged 9 years, with him on the pretext of providing toffee. When Gheesa Ram did not return back, he was vigorously searched in nearby villages but he could not be located. The appellant was however found sleeping in Tikuram ki Dhani. On being asked Gheesa Ram, appellant confessed before the villagers that he had killed Gheesa Ram and pushed the dead body in a lonely well. On that report case under sections 302 and 364 IPC was registered and investigation commenced. Necessary memos were drawn, statements of witnesses were recorded, dead body was subjected to autopsy, appellant was arrested and on completion of investigation charge sheet was filed against appellant. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Sikar. Charges under sections 363, 364 and 302 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 19 witnesses. In the explanation under section 313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned Amicus Curiae, learned Public Prosecutor and with their assistance scanned the record.

4. As per postmortem report (Ex.P-12) following ante mortem injuries were found on the dead body :-

1. Lacerated wound 5 x 2 x 1cm on occipital region with fracture of occipital bone & injury to brain matter.

Dr. Shyam Sunder Sharma (Pw.7) who performed autopsy on the dead body opined that the cause of death was shock due to injury to brain.

5. The case of prosecution is founded on circumstantial evidence, the evidence afforded not by the direct testimony of an eye witness to fact to be proved, but by the bearing upon that fact or other and subsidiary facts which are relied upon as inconsistent with any result other than truth of the principal facts. Circumstantial evidence is not an evidence direct to the point in issue, but evidence of various facts other than the fact in issue which are so associated with the fact in issue that taken together they form a chain of circumstances leading to an inference or presumption of the existence of the principal fact. It is well settled that the circumstantial evidence should be like spider's web leaving no exit for the accused to slip away. The various links in the chain, when taken in isolation, might not connect the accused with the commission of the crime but when taken together may unmistakably point out the guilt of the culprit. Case based on circumstantial evidence must satisfy three tests:-

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
(ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;
(iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else.

6. In the instant matter we have to adjudge the total cumulative effect of all the proved circumstances, each of which reinforces the

conclusion of the guilt of the appellants.

7. In order to establish the guilt of appellant, the prosecution at the trial placed reliance on the following circumstances:-

(1) Information by appellant under section 27 of Evidence Act about recovery of dead body.
(2) Foot-prints of appellant and the deceased were found near the well in which the dead body got recovered.
(3) Deceased was last seen in the company of appellant.
(4) Extra Judicial confession of appellant.
(5) Recovery of dead body at the instance of appellant.

8. Learned trial court in the impugned judgment held that first and second circumstances were not found established. However reliance was placed on the evidence adduced by the prosecution to prove the circumstances of `last seen', extra judicial confession and recovery of dead body in convicting and sentencing the appellant.

LAST SEEN:

9. To prove circumstance of `last seen', the prosecution examined Vimla (Pw.8), Rajendra (Pw.2), Badri Prasad (Pw.3) and Santosh Kumar (Pw.11). Vimla (mother of deceased) deposed in her examination in chief thus:-

"घीसालाल के साथ रामलाल ने कुछ नहीं किया"

In the cross examination she admitted that earlier also Ram Lal used to take Gheesa Ram for providing toffee. Rajendra (Pw.2) and Badri Prasad (Pw.3) deposed that they found the appellant in the house of Tikuram where

the appellant informed them that after providing toffee he left Gheesa Ram. But afterwards, appellant made confession that he killed Gheesa Ram and pushed him into the well. Santosh Kumar (Pw.11) deposed that appellant came to his shop with the deceased and purchased toffee. In his cross examination he however stated that police did not record his statement.

10. The prosecution is able to establish that the appellant took the deceased with him and they were seen together in the toffee shop but this fact itself does not lead to irresistible inference that the appellant had murdered the deceased. In Lakhan Pal Vs. State (AIR 1979 SC 1620) it was propounded by Hon'ble Supreme Court that the mere fact that the accused and the deceased were together in the field prior to the occurrence does not by itself lead to irresistible inference that the accused must have murdered the deceased. In State of U.P. Vs. Satish (2005)3 SCC 114, their Lordships of Supreme Court had occasion to consider "last seen theory" and it was indicated as under:- (Para 22)

> "The last-seen theory comes into play where the time-gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases."

Delhi High Court in Virendra Kumar Vs. State 1996 Cr.L.J. 231) held that circumstance of last seen together alone would not be

sufficient to bring home the offence to the accused particularly when there is not proof of motive.

EXTRA JUDICIAL CONFESSION:

11. Before analysing the evidence adduced to establish alleged extra judicial confession made by the appellant, we deem it appropriate to consider the question as to what the Extra Judicial Confession is? It is well settled that Confession may be divided into `Judicial' and `Extra Judicial'. Judicial Confessions are those which are made before the magistrate or in court, in the due course of legal proceedings and it is essential that they be made of the free will of the party and with full knowledge of the nature and consequences of the confession." Extra Judicial confessions are those which are made by the party elsewhere then before a Magistrate or in court. This term embracing not only express confessions of crime, but all those admissions and acts of the accused from which guilt may be implied.

12. Extra Judicial Confession may properly be made to any person or body of persons. It is not even necessary that the statement should have been addressed to any definite individual. It may have taken the form of a prayer. An extra judicial confession to be made to one who is not a person in authority and which is free from any suspicion as to its voluntary character and has also a ring of truth in it is admissible in evidence and deserves to be acted upon. Extra Judicial Confession made before stock witness who has casually knowing the accused is not admissible.

13. From the stand point of reason a confession may be subject to grave infirmative considerations, among others that it is extremely improbable that a person should accuse himself of a serious crime. It may

have been made from some false hope of benefit or fear of injury and still be false. The mind of criminal may be excited or diseased or morbid. The general rule is, that each confession should be weighed by its own circumstance. The evidence of extra-judicial confession, though a weak type of evidence, can form the basis for conviction if the confession made by the accused is voluntary, true and trustworthy. It can be acted upon if the evidence of the person, before whom the extra judicial confession has been made by the accused, inspires confidence.

14. We have therefore to examine whether the alleged confession made by the appellant was voluntary, true and trustworthy. From the testimony of Sanwar Mal (Pw.4), Chhotu Singh (Pw.1) and Birbal (Pw.9) it is evident that 20-30 villagers surrounded appellant and interrogated him. Thereafter appellant confessed that he killed Gheesa Ram and pushed him into well. Having closely analysed the evidence of these witnesses we find that the alleged confession was not voluntary.

15. At this juncture it may be noticed that Ramavtar (Pw.19) on April 21, 2001 at 11.15 AM telephonically informed Police Station Sadar Sikar that the appellant pushed Gheesa Ram into the well. The information was recorded in `Rojnamcha Aam' (Ex.D-10) at item No.713. Since names of the accused and the deceased as well as the details of the incident were incorporated in Ex.D-10, we treat it FIR and the written report (Ex.P-9) wherein the names of person in front of whom the appellant made alleged confession, is hit by Section 162 CrPC. It thus appears that the villagers of village Deeppura Raja ji on the basis of suspicion implicated the appellant.

16. Since this fact was known to the father and other relatives of the

deceased that the dead body was lying in the well, it cannot be held that the dead body got recovered at the instance of the appellant.

17. In view of the incongruities noticed by us we are of the view that the evidence collected by the prosecution is not qualitatively such that on every reasonable hypothesis the conclusion is that the appellant is guilty. We find that the chain of circumstantial evidence against the appellant is not complete and is capable of any other hypothesis than the guilt of the appellant. We do not find a combination of facts creating a network through which there is no escape for the appellant. Learned trial Judge in our opinion has committed error in convicting and sentencing the appellant on the basis of strong suspicion.

18. In Ashish Batham Vs. State of M.P. (2002)7 SCC 317, their Lordships of Supreme Court indicated that mere suspicion, however strong it may be, cannot take the place of legal proof. It was observed as under:-

> "Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Court dealing with criminal case at least should constantly remember that there is a long mental distance between "may be true" and "must be true" and this basic and golden rule only helps to maintain the vital distinction between "conjectures" and "sure conclusion" to

> be arrived at on the touchstone of a dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record."

19. In the instant case we find that the learned trial court failed to bridge the gap between "may be true" and "Must be True" and based its finding on the conjectures. Charges under sections 302 and 364 IPC therefore could not be established beyond reasonable doubt.

20. For these reasons, we allow the appeal and set aside the impugned judgment dated August 27, 2002 of the learned Additional Sessions Judge (Fast Track) Sikar. We acquit the appellant of the charges under sections 302 and 364 IPC. The appellant Ram Lal, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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